

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

ROBERT M. MARTIN II, M.D.)
Certificate No. A-37373)

No. 04-94-35046

Respondent.)
_____)

DECISION

The attached Stipulation for Surrender of License is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective on May 4, 1998.

IT IS SO ORDERED April 2, 1998.

By: Carole Hurvitz, M.D.
CAROLE HURVITZ, M.D.
Chair - Panel B
Division of Medical Quality

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 RICHARD D. GARSKE,
Deputy Attorney General
3 State Bar No. 50569
Department of Justice
4 110 West A Street, Suite 1100
Post Office Box 85266
5 San Diego, California 92186-5266
Telephone: (619) 645-2075

6 Attorneys for Complainant
7

8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation)	Case No. 04-94-35046
Against:)	
12)	
13 ROBERT M. MARTIN, II, M.D.)	STIPULATION FOR
1016 Douglas Blvd.)	SURRENDER OF LICENSE
14 Roseville, CA 95678)	
)	
15 Physician and Surgeon's)	
Certificate No. A37373)	
)	
16 Respondent.)	
)	

17
18 **IT IS HEREBY STIPULATED AND AGREED** by and between
19 the parties to the above-entitled proceedings that the following
20 matters are true:

21 1. Complainant, Ron Joseph, is the Executive Director
22 of the Medical Board of California, Department of Consumer
23 Affairs ("Board") and is represented by Daniel E. Lungren,
24 Attorney General of the State of California by Richard D. Garske,
25 Deputy Attorney General.

26 2. Robert M. Martin, II, M.D., ("respondent") is
27 representing himself in this matter.

1 3. Respondent has received and read the Accusation
2 which is presently on file and pending in Case No. 04-94-35046
3 before the Division of Medical Quality of the Board ("Division"),
4 a copy of which is attached as Exhibit A and incorporated herein
5 by reference.

6 4. Respondent understands the nature of the charges
7 alleged in the Accusation and that, if proven at hearing, such
8 charges and allegations would constitute cause for imposing
9 discipline upon respondent's license issued by the Board.

10 5. Respondent is aware of each of respondent's
11 rights, including the right to a hearing on the charges and
12 allegations, the right to confront and cross-examine witnesses
13 who would testify against respondent, the right to testify and
14 present evidence on his own behalf, as well as to the issuance of
15 subpoenas to compel the attendance of witnesses and the
16 production of documents, the right to contest the charges and
17 allegations, and other rights which are accorded respondent
18 pursuant to the California Administrative Procedure Act (Gov.
19 Code, § 11500 et seq.) and other applicable laws, including the
20 right to seek reconsideration, review by the superior court, and
21 appellate review.

22 6. In order to avoid the expense and uncertainty of a
23 hearing, respondent freely and voluntarily waives each and every
24 one of the rights set forth herein, and any and all other rights
25 which may be accorded him pursuant to the California
26 Administrative Procedure Act, California Code of Civil Procedure,
27 ///

1 and all other applicable provisions of law, concerning
2 Accusation No. 04-94-35046.

3 7. For the purpose of resolving Accusation No.
4 04-94-35046, respondent hereby gives up his right to contest that
5 cause for discipline exists based on those charges and agrees to
6 surrender of his Physician's and Surgeon's license for the
7 Division's formal acceptance.

8 8. Respondent understands that by signing this
9 Stipulation he is enabling the Division to issue its order
10 accepting the surrender of his license without further process.
11 He understands and agrees that Board staff and counsel for
12 complainant may communicate directly with the Division regarding
13 this Stipulation, without notice to or participation by
14 respondent. In the event that this Stipulation is rejected for
15 any reason by the Division, it will be of no force or effect for
16 either party. The Division will not be disqualified from further
17 action in this matter by virtue of its consideration of this
18 Stipulation.

19 9. Upon acceptance of this Stipulation by the
20 Division, respondent understands that he will no longer be
21 permitted to practice as a physician or surgeon in California,
22 and also agrees to surrender and cause to be delivered to the
23 Division both his license and wallet certificate before the
24 effective date of the Decision.

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1 10. Respondent fully understands and agrees that if
2 he ever files an application for relicensure or reinstatement
3 in the State of California, the Division shall treat it as a
4 petition for reinstatement, the respondent must comply with all
5 the laws, regulations and procedures for reinstatement of a
6 revoked license in effect at the time the petition is filed,
7 and all of the charges and allegations contained in Accusation
8 No. 04-94-35046 will be deemed to be true, correct and admitted
9 by respondent when the Division determines whether to grant or
10 deny the petition.

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DATED: 02/09/98

DATED: 5/17/98


Richard D. Garske
Deputy Attorney General
Attorneys for Complainant

ACCUSATION

Exhibit A

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 RICHARD D. GARSKE,
Deputy Attorney General
3 State Bar No. 50569
Department of Justice
4 110 West A Street, Suite 1100
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8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation
Against:

12 ROBERT M. MARTIN II, M.D.
13 2015 East Florrance Avenue
Los Angeles, CA 90001

14 Physician and Surgeon's
15 Certificate No. A37373

16 Respondent.
17

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO December 21 1996
BY Kimela E. Mosher ANALYST

) Case No. 04-94-35046

) OAH No.

) ACCUSATION

18 COMES NOW Complainant Ron Joseph who, as causes for
19 disciplinary action, alleges as follows:

20 1. Complainant is the Executive Director of the
21 Medical Board of California, Department of Consumer Affairs,
22 State of California (hereinafter the "Board"), and makes and
23 files this accusation solely in his official capacity as such and
24 not otherwise.

25 **LICENSE STATUS:**

26 2. At all times mentioned herein ROBERT M. MARTIN, II,
27 M.D., (hereinafter "respondent"), was licensed by the Board under

1 Physician's and Surgeon's Certificate No. A37373. Said
2 certificate was issued by the Board on August 28, 1981, and is in
3 CURRENT STATUS at the present time. Respondent is not a
4 supervisor of a physician assistant.

5 STATUTES:

6 3. California Business and Professions Code section
7 2220 provides, in pertinent part, that the Division of Medical
8 Quality may take action against all persons guilty of violating
9 the provisions of Chapter 5 of Division 2 of that Code.

10 4. California Business and Professions Code section
11 2227 provides that a licensee whose matter has been heard by the
12 Division of Medical Quality, by a medical quality review
13 committee or a panel of such committee, or by an administrative
14 law judge, or whose default has been entered, and who is found
15 guilty may, in accordance with the provisions of this chapter:

16 (a) have his or her certificate revoked upon order of the
17 division; (b) have his or her right to practice suspended for a
18 period not to exceed one year upon order of the division or a
19 committee or panel thereof; (c) be placed on probation and be
20 required to pay the costs of probation monitoring upon order of
21 the division or a committee or panel thereof; (d) be publicly
22 reprimanded by the division or a committee or panel thereof; (e)
23 have such other action taken in relation to discipline as the
24 division, a committee or panel thereof, or an administrative law
25 judge may deem proper.

26 5. California Business and Professions Code section
27 2234 provides that:

1 "The Division of Medical Quality shall take
2 action against any licensee who is charged with
3 unprofessional conduct. In addition to other
provisions of this article, unprofessional conduct
includes, but is not limited to, the following:

4 "(a) Violating or attempting to violate,
5 directly or indirectly, or assisting in or abetting the
violation of, or conspiring to violate, any provision
of this chapter.

6 "(b) Gross negligence.

7 "(c) Repeated negligent acts.

8 "(d) Incompetence.

9 "(e) The commission of any act involving
10 dishonesty or corruption which is substantially related
11 to the qualifications, functions, or duties of a
physician and surgeon.

12 "(f) Any action or conduct which would have
13 warranted the denial of a certificate."

14 6. California Business and Professions Code section
15 725 provides, in pertinent part:

16 "Repeated acts of clearly excessive prescribing or
17 administering of drugs or treatment, repeated acts of
18 clearly excessive use of diagnostic procedures, or repeated
19 acts of clearly excessive use of diagnostic or treatment
20 facilities as determined by the standard of the community of
licensees is unprofessional conduct for a physician and
surgeon, dentist, podiatrist, psychologist, physical
therapist, chiropractor, or optometrist."

21 COST RECOVERY:

22 7. California Business and Professions Code section
23 125.3 provides, in pertinent part, that in any order issued in
24 resolution of a disciplinary proceeding, a board may request that
25 the administrative law judge direct a licensee found to have
26 committed a violation or violations of the licensing act to pay a
27 sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case, including charges imposed by the
2 Attorney General.

3 Under section 125.3, subdivision (c), a certified copy
4 of the actual costs or a good faith estimate of costs where
5 actual costs are not available, including investigative and
6 enforcement costs, and charges imposed by the Attorney General,
7 up to the date of the hearing, signed by the designated
8 representative of the entity bringing the proceeding shall be
9 prima facie evidence of reasonable costs of investigation and
10 prosecution of the case.

11 MEDI-CAL:

12 8. Section 16.01 of the 1996-1997 Budget Act of the
13 State of California provides, in pertinent part, that: (a) No
14 funds appropriated by this act may be expended to pay any Medi-
15 Cal claim for any service performed by a physician while that
16 physician's license is under suspension or revocation due to a
17 disciplinary action of the Medical Board of California; and (b)
18 no funds appropriated by this act may be expended to pay any
19 Medi-Cal claim for any surgical service or other invasive
20 procedure performed on any Medi-Cal beneficiary by a physician if
21 that physician has been placed on probation due to a disciplinary
22 action of the Medical Board of California related to the
23 performance of that specific service or procedure on any patient,
24 except in any case where the board makes a determination during
25 its disciplinary process that there exist compelling
26 circumstances that warrant continued Medi-Cal reimbursement
27 during the probationary period.

1 DISCIPLINARY CHARGES AND ALLEGATIONS:

2 Gross Negligence

3 9. Respondent has subjected his license to
4 disciplinary action under California Business and Professions
5 Code sections 2220, 2227 and 2234 on the grounds of
6 unprofessional conduct, as defined by section 2234, subdivision
7 (b) of the Code in that he has committed acts of gross
8 negligence, as more particularly alleged hereinafter:

9 A. On or about March 19, 1989, patient Dora W.,
10 then 63 years old, had developed right shoulder pain
11 after falling from a ladder.

12 B. On May 15, 1990, she had received an MRI when she
13 was diagnosed with a gross tear of her rotator cuff. On or
14 about July 20, 1990, Dora W. was referred to respondent for
15 a second opinion.

16 C. On or about August 13, 1990, Dora W.
17 underwent surgery, a diagnostic arthroscopy, repair of
18 the rotator cuff, acromioplasty, resection of the CA
19 ligament and subacromial bursa by Dr. Ronald G.
20 Afterwards she was placed into physical therapy for
21 rehabilitation purposes.

22 D. On or about September 14, 1990, Dora W. was
23 again referred to respondent; this time for physical
24 therapy for rehabilitation purposes.

25 E. On or about and in between September 18, 1990 and
26 November 6, 1990, respondent improperly, repeatedly, and
27 excessively rendered physical therapy treatment modalities

1 to his patient Dora W., which consisted of diathermy,
2 ultrasound and therapeutic exercises totalling 23 treatments
3 in a 49-day period, averaging three to five treatments per
4 week.

5 F. On or about October 19, 1990, respondent
6 inappropriately treated Dora W. by having her perform
7 three handstands. Respondent had Dora W. perform the
8 handstands while he supported her, using her own body
9 weight.

10 G. Patient Dora W. had no physical therapy
11 within the 10 days preceding October 19, 1990. She
12 experienced pain in her right shoulder immediately
13 after descending from the handstands on October 19,
14 1990.

15 H. Following the October 19, 1990 incident, Dora
16 W.'s right shoulder was very painful and the shoulder's
17 range of motion had been somewhat reduced. Her
18 symptoms were characterized as a setback, and
19 therapeutic modalities were continued without
20 exercises.

21 I. Respondent's treatment of patient Dora W.
22 waned after approximately the first week in November
23 with a six-week hiatus and returned on approximately
24 December 18 or 19, 1990 with multiple musculoskeletal
25 symptoms.

26 J. On or about April 11, 1991, Dora W.'s orthopedic
27 surgeon, Dr. Ronald G., performed another repair of the

1 rotator cuff on her right shoulder after an MRI revealed
2 another tear.

3 K. On or about August 9, 1991, after an arthrogram,
4 Dora W. was diagnosed with a left shoulder problem which
5 eventually turned out to be another full thickness rotator
6 cuff tear. She underwent a left shoulder rotator cuff
7 repair surgery on or about October 7, 1991.

8 Repeated Negligent Acts:

9 10. Respondent has further subjected his license to
10 disciplinary action under California Business & Professions Code
11 sections 2220, 2227 and 2234 on the grounds of unprofessional
12 conduct, as defined by section 2234, subdivision (c), of the Code
13 in that he has committed repeated negligent acts, as more
14 particularly alleged in paragraphs 9A through and including 9K
15 above, which are incorporated by reference and realleged as if
16 fully set forth herein.

17 Incompetence:

18 11. Respondent has further subjected his license to
19 disciplinary action under California Business and Professions
20 Code sections 2220, 2227 and 2234 on the grounds of
21 unprofessional conduct as defined by section 2234, subdivision
22 (d) of the Code in that he has committed acts of incompetence as
23 more particularly alleged in Paragraphs 9A, through and including
24 9K above which are incorporated by reference and realleged as if
25 fully set forth herein.

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1 Excessive Treatment (B & P § 725):

2 12. Respondent has further subjected his license to
3 disciplinary action under California Business and Professions
4 Code sections 2220, 2227 and 2234 on the grounds of
5 unprofessional conduct, as defined by section 725 of the Code, in
6 that he is guilty of the commission of acts involving repeated
7 excessive prescribing and/or excessive treatment and/or repeated
8 acts of excessive use of diagnostic procedures as determined by
9 the standard of the community of a physician and surgeon, as more
10 particularly alleged hereinafter:

11 A. Paragraphs 9A through and including 9K above
12 are incorporated by reference and realleged as if fully
13 set forth herein.

14 B. Respondent repeatedly and excessively treated
15 Dora W. during the rehabilitation process. Heating
16 modalities, including ultrasound and diathermy, were
17 applied on too frequent a basis, for unusually
18 prolonged periods of time, in the face of continued
19 symptomatology and relative lack of response to those
20 therapeutic measures.

21 PRAYER

22 WHEREFORE, Complainant requests that the Board hold a
23 hearing on the matters alleged herein, and that following said
24 hearing, the Board issue a decision:

25 1. Revoking or suspending Physician and
26 Surgeon's Certificate No. A37373, heretofore issued to
27 respondent, Robert M. Martin, II, M.D.;

2. Ordering respondent to pay the Board the actual and reasonable costs of the investigation and enforcement of this case and, if placed on probation, the costs of probation monitoring; and

3. Taking such other and further action as the Board deems appropriate to protect the public health, safety and welfare.

DATED: December 20, 1996

RON JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
Complainant